IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1881 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAKESH J KOTHARI PARTNER OF NIPPON TUBE INDUSTRIES

Versus

UNION OF INDIA

Appearance:
MR SUDHIR M MEHTA for Petitioner
MR ANANT S DAVE for Respondents

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE N.G.NANDI

Date of decision: 25/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

Rule. Mr.Anant S.Dave waives service of Rule on behalf of the respondents.

The only grievance which has been raised by the petitioner in this case is that the petitioner had settled his dues under the Kar Vivad Samadhan Scheme, 1998 (KVSS) under the Finance Act, 1998 and he had been

asking for the issue of the certificate that the entire deposit had been made. The entire dues in accordance with the KVSS and as per the orders passed by the designated authority, i.e. the Commissioner of Central Excise, Surat-II were paid and the matter stood settled on 17th Feb.1999. However, as late as on 29th Nov.2000, again Form 2B under Rule 4(B) of KVSS Rules, 1998 was issued and this time it is mentioned in the remarks column that the tax arrears declared by the declarant is of duty on the seized goods for which a show cause notice had been issued to the party and as per Section 87(m))ii) of the Finance (No.2) Act, the same will not be covered under the KVSS Scheme and the show cause notice issued on 11th June 1996 shall be adjudicated by the competent authority. Learned Counsel for the petitioner while challenging this amendment to the Form 2B, an intimation under Section 90(1) of the Finance (No.2) Act, 1998 in respect of the KVSS, 1998 as has been issued on 29th Nov.2000 has made two submissions: His first submission is that once the Department itself had treated this case to be a case of KVSS itself and he had cleared the dues under the KVSS as required by the Deptt. and the matter stood resolved, there is no question of now taking a somersault and issuing a fresh order in Form 2B as has been done by the designated authority on 29th Nov.2000 and secondly that before taking this view as stated in the remarks column of this Form 2B, no notice whatsoever had been given to the petitioner and no action inspired notice has been given as to why this matter should be treated beyond the scope of KVSS Scheme.

Mr.Anant S.Dave appearing on behalf of the respondents while referring to his affidavit-in-reply dated 19th July 2001 has invited our attention to the communication dated 5th July 1999 sent by the Jt.Secretary (Legal), Ministry of Finance, Department of Revenue, as sent to all Chief Commissioners of Customs and Central Excise that in fact under the provisions of Section 87(m)(ii), the matter was not to be covered under the KVSS but has submitted before us that the Department is prepared to withdraw this communication dated 20th Nov.2000 in Form 2B which was only in the nature of intimation and would proceed in this matter in accordance with law and before taking up the adjudication of the show cause notice dated 11th June 1996, an action inspired notice shall be given to the petitioner and appropriate orders shall be passed only after affording a reasonable opportunity to the petitioner in this regard.

However, learned Counsel for the petitioner submits that that cannot be the end of the petitioner's

grievance. He submits that his goods have been seized and these goods are lying since 1995 and that the same may be directed to be released. In the facts and circumstances of this case, we direct as under:

(1) The Form 2B dated 29th Nov.2000 as issued by the designated authority, i.e. the Commissioner of Excise, Surat-II shall be withdrawn within a period of two weeks from today and shall not be acted upon and given effect to against the present petitioner.

(2) It will be open for the respondents to proceed afresh in this matter and take a decision with regard to pursuing the show cause notice dated 11th July 1996 only after affording a reasonable opportunity to the petitioner in this regard and after giving an action inspired notice to him containing grounds as to why the show cause notice dated 11th July 1996 should not be taken for adjudication. It will be open for the petitioner to raise all objections in these proceedings. All consequences as a result of such adjudication shall follow.

(3) Should the petitioner submit an undertaking that in case the adjudication as mentioned in direction at No.2 is taken up and thereafter in case the result of adjudication finally goes against him subject to right of challenge, he will deposit the entire dues as if the matter was not covered under the KVSS Scheme, the goods seized on 19th Dec.1995 shall be released within ten days from the date such undertaking is furnished.

This Special Civil Application is allowed in the terms as aforesaid and the Rule is made absolute accordingly.

25th July 2001 (M.R. Calla, J.)

(N.G. Nandi, J.)

Sreeram.